

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

DEC 23 1997

In the Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Development of Operational,
 Technical and Spectrum Requirements
 For Meeting Federal, State and Local
 Public Safety Agency Communication
 Requirements Throughout the Year 2010

WT Docket No. 96-86

Establishment of Rules and Requirements
 For Priority Access Services

To: The Commission

COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company ("360°")¹, hereby respectfully submits its comments to the Notice of Proposed Rulemaking ("*Notice*") in the above-captioned proceeding.² In the *Notice*, the Commission seeks comment on the establishment of wireless priority access services, using commercial systems such as cellular and PCS networks, in order to enhance communications during emergency and disaster situations.³ In particular, 360° will address the importance of the Commission's tentative conclusions that such services must remain voluntary

¹ 360° is the country's second largest publicly held cellular company provider. The company offers wireless voice and data services to 2.4 million customers in more than 100 markets throughout 15 states. 360° also provides residential long distance and paging services.

² See *Notice of Proposed Rulemaking*, The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements For Priority Access Service, FCC 97-373 (Oct. 24, 1997).

³ *Id.* at ¶ 1.

for providers rather than mandated, and that liability protection is guaranteed for providers of these services.

I. THE COMMISSION SHOULD REFRAIN FROM MANDATING PRIORITY ACCESS SERVICES AND ALLOW SUCH SERVICES TO BE OFFERED ON A VOLUNTARY BASIS

On October 19, 1995, the National Communications System ("NCS") filed a Petition for Rulemaking (the "*Petition*") requesting the Commission to initiate a proceeding for the implementation of Cellular Priority Access Service ("CPAS").⁴ In the *Petition*, the NCS recommended that this service be offered on a voluntary basis. 360° strongly concurs. 360° urges the Commission to refrain from any unnecessary regulation and instead, rely on market forces as the mechanism for facilitating priority access service. If the market is allowed to determine the need for the priority service, providers will be forced to compete to fill that need. This type of market incentive, in the wake of the recent dramatic increase in new entrants into the wireless industry, will ensure that carriers develop the most innovative technological services at the lowest costs for customers. The explosive growth and innovation of the wireless industry illustrates how well market forces drive competition, ensuring that consumers benefit from the newest technology at the lowest prices.

Whenever regulations mandating the provision of particular services are imposed on carriers, rather than allowing the services to be determined by the open market, significant cost recovery issues arise. If the Commission chooses to mandate wireless priority access, a cost recovery mechanism would need to be established to allow carriers to recover the costs to implement such regulation. As the Commission is well aware, cost recovery mechanisms have historically proven difficult to establish and maintain, and can slow the implementation of the

⁴ See *Petition For Rulemaking*, Cellular Priority Access Service, filed by National Communications System, WT Docket No. 96-86 (filed Oct. 19, 1995).

service (i.e., E911 and CALEA). In addition, such mandates to provide particular services are often not compatible with the actual need for the services. For example, priority access services may not be necessary in some areas of the country. If such services were mandated, carriers would be forced to substantially upgrade their systems even though the services triggering the upgrades may never be used. This would be a waste of capital that could better be used for purposes directly benefiting consumers.

Moreover, a regulatory mandate in this area would be contrary to the Commission's current emphasis on streamlining and deregulation. The Commission should take great pride in its efforts to reduce regulation and promote competition in order to secure lower prices and innovative services for consumers. Such deregulatory goals foster the rapid deployment of new technology. To increase regulation by mandating wireless priority access service would be wholly inconsistent with the Commission's current practices.

Accordingly, 360° submits that wireless priority access services will evolve effectively without federal regulatory mandates. 360° urges the Commission not to impose unnecessary regulations, but rather to allow such services to be a voluntary offering.

II. THE COMMISSION MUST ENSURE THAT PRIORITY ACCESS SERVICE PROVIDERS HAVE ADEQUATE LIABILITY PROTECTION

The Commission also seeks comment on liability issues related to the offering of priority access services. In particular, the Commission tentatively concludes that, to the extent that priority access services are a voluntary offering made by a carrier and to the extent the Commission "... refrains from establishing detailed rules regarding various levels of priority access, it would be prudent for the Commission to provide specifically for limitation on liability under Section 202."⁵ 360° wholeheartedly agrees. The Commission correctly concludes that

⁵ Notice at ¶ 200.

liability protection is crucial to the successful offering of this service. Without explicit protection, carriers would likely be reluctant to provide priority access.

Toward this end, the Commission proposes the following liability protection:

that it will be sufficient for a CMRS provider, in responding to any complaint alleging unreasonable discrimination or undue preference under Section 202 of the Communications Act, to demonstrate that the service provided by the carrier is exclusively designed to enable authorized priority users, in emergency situations when spectrum used by the carrier is congested, to gain access to the next available channel on the service network of the carrier, before subscribers not engaged in public safety or NSEP function. Such a demonstration would shift the burden of proof to the complainant.⁶

360° submits that this proposal would not provide sufficient liability protection for CMRS providers. Merely shifting the burden of proof could still leave carriers who comply with the Commission's priority access rules open to liability, and would certainly expose them to potentially substantial litigation costs. Instead, 360° urges the Commission to modify its proposal such that CMRS providers complying with the priority access regulations adopted in this proceeding would be fully insulated from any finding of liability under Section 202, with respect to their provision of priority access. Such modified liability protection would provide the appropriate assurances to enable carriers confidently to implement priority access, while still ensuring that the public is adequately protected against prohibited discriminatory service practices.

III. CONCLUSION

For the foregoing reasons, 360° urges the Commission to establish wireless priority access services as a voluntary service offering, and to adopt explicit and sufficient liability

⁶ Id.

protection for carriers who offer these services in compliance with the regulations adopted in this proceeding.

Respectfully submitted,

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